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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,
Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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I. OPINION IN COURT BELOW.

The opinion of the Supreme Court of Georgia in the case of Atlantic Coast Line Railroad Company v. N. E. Pope, et al., has not yet been reported in the official Georgia Reports, but has been published in 71 S. E. (2d) 243 and is included in the transcript of the Record (R. 12).

II. STATEMENT OF THE CASE.

The statement of the case set out in the brief of petitioners in support of their petition for certiorari is substantially correct, except that it fails to show that the petition filed by respondent in the Superior Court of Ben Hill County, Georgia, alleged that Pope had been a resident

of Ben Hill County, Georgia, continuously for a period of eighteen or more years and that the cause of action upon which Pope filed suit in the Circuit Court of Jefferson County, Alabama, arose in Ben Hill County, Georgia.

III. ARGUMENT.

A. Summary.

The question raised on this petition for certiorari is whether the decision of the Supreme Court of Georgia which is sought to be reviewed has decided a federal question of substance contrary to the decisions of this Court. We submit that there is no conflict and that the petition for certiorari should be denied for the reason that the decision of the Supreme Court of Georgia—

(1) Correctly interprets and construes the effect of Section 1404 (a) of the Judicial Code (28 U.S.C.A. Sec. 1404 (a)) upon Section 6 of the Federal Employers' Liability Act (45 U.S.C.A. Sec. 56); and

(2) Is in accord with and conforms to the prevailing decisions of this Court upon the question involved.

B. Statutes Involved.

The statutes involved are:

(1) Section 6 of the Federal Employers' Liability Act, 45 U.S.C.A. Sec. 56, the pertinent provision of which is:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The

jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, - - - - -"

(2) Section 1404 (a) of the Judicial Code, 28 U.S.C.A. Sec. 1404 (a), which is:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. Decisions of This Court.

The pertinent prevailing decisions of this Court are:

Ex parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207. (1949)

State of Missouri ex rel. Southern Railway Company v. Mayfield, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3. (1950)

D. Argument.

1. A STATE COURT HAS INHERENT EQUITY POWER TO RESTRAIN ITS CITIZENS FROM PROSECUTING CAUSES OF ACTION IN OTHER STATES UPON PROPER SHOWING.

Respondent filed its suit in the Superior Court of Ben Hill County, Georgia, to restrain appellants from prosecuting a cause of action filed in the Circuit Court of Jefferson County, Alabama. In its decision, the Supreme Court of Georgia held that the allegations of the petition were sufficient against general demurrers. (R. 13).

The inherent power of courts of equity to enjoin its citizens from prosecuting burdensome and oppressive actions in other jurisdictions has long been recognized and is well established. Appellants do not question this power.

The Supreme Court of Georgia has long recognized this power as shown by the decisions cited in the opinion of the Court below. (R. 13, 14).

While recognizing this inherent power of state courts to grant such equitable relief, this Court in the cases of Baltimore & Ohio Railroad Co., v. Kepner, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28, 32, (1941) and Miles v. Illinois Central Railroad Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, 1134, (1942) refused to sanction the granting of such relief in Federal Employers' Liability Act cases, and based its decision solely upon the venue section of the Federal Employers' Liability Act, 45 U.S.C.A. 56 (Section 6 of the Act).

2. BY ENACTING SECTION 1404 (a) OF THE JUDICIAL CODE CONGRESS EXPRESSED ITS INTENTION TO FREE THE COURTS FROM THE RESTRICTIONS IMPOSED BY THE KEPNER AND MILES DECISIONS.

The entire legislative history of Section 1404 (a) of the Judicial Code shows the intention of Congress to remedy the abuses in the choice of forums by plaintiffs who saw fit to bring their suits far from where the cause of action arose and the witnesses resided.

> "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits. Baltimore & O. R. Co. v. Kepner, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, 136 A.L.R. 1222 (1941); Miles v. Illinois C. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104 (1942); ————. The revisor's notes, which accompany each section of the Code, here read as follows: 'Subsection (a) was drafted in accordance with doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see Baltimore & Ohio R. Co. v. Kepner, 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employers [Sic] Liabil-

ity Act in New York, although the accident occurred and the employee resided in Ohio.'"

Ex parte Collett, 337 U. S. 55, 57, 69 S. Ct. 944, 93 L. Ed. 1207, 1209. (1949)

In the case of Nunn v. Chicago, Milwaukee, St. P. & P. R. Co., 80 F. Supp. 745 (S.D.N.Y. 1948), where the defendant railroad invoked Sec. 1404 (a) and had the case transferred to a more convenient forum, the Court, after discussing the Kepner and Miles cases, stated:

"The foregoing cases are no longer controlling, or even applicable. Not only were they decided prior to the enactment of the new Judicial Code, when there was no provision of statute similar to 1404 (a), but the legislative history of Section 1404 (a) makes it abundantly clear that it was the very purpose of Congress, in enacting that section, to change the rule which had been approved by the decisions in those cases - - - a course indicated by the statement of the Supreme Court in the Kepner case, supra, page 54 of 314 U. S., page 10 of 62 S. Ct., that if the rule 'is deemed unjust, the remedy is legislative.'"

Nunn v. Chicago, etc., R. Co. supra, p. 747.

The appellants point with pride to this Court's statement in Ex parte Collett (Appellants' Brief, p. 13) that Section 6 of the Liability Act and Section 1404 (a) deal with two separate and distinct problems. We agree. Section 6 defines venue. Section 1404 (a) deals with the right to transfer an action properly brought. Injunction affords relief when suits become oppressive and inequitable because brought in distant courts. The use of injunctive relief is as separate and distinct from Section 6 as is Section 1404 (a).

We admit that Pope had the right to bring his suit in the Circuit Court of Jefferson County, Alabama, but we

say that Pope can be brought home when it is shown that he is acting unfairly, oppressively and unjustly.

Section 6 defines the proper forums in which injured employees can bring their suits. When it enacted Section 1404 (a), Congress made it clear that Section 6 does nothing more. Section 6 of the Federal Employers' Liability Act does not now prohibit the use of injunctive relief in proper cases.

This was further clarified by the case of Missouri v. Mayfield (U. S. 1950) 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3, in which this Court held that a State Court is not compelled to reject the doctrine of forum non conveniens by any provisions of the Federal law. In so holding the Court stated:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of Federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits according to its own local law."
>
> Missouri v. Mayfield, 340 U. S. 1, 5; 71 S. Ct. 1, 95 L. Ed. 3, 8. (1950)

In a concurring opinion Mr. Justice Jackson stated:

> "The Missouri Court appears to have acted under the supposed compulsion of Miles vs. Illinois Cent. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104, among other of this Court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. *By amendment, 28 USC Section 1404 (a),* as interpreted in Ex parte Collett, 337 US 55, 93 L. Ed. 1207, 69 S. Ct. 944, 959, 10 ALR 2d 921, *Congress has removed the compulsion which determined the Miles Case,* and the Missouri Court should no longer regard it as controlling." (Emphasis supplied.)
>
> Missouri v. Mayfield, supra.

Section 1404 (a) provides a remedy in cases filed in the Federal courts. It removed the compulsion that was thought to exist when the Miles case was decided. The State courts are now free to apply the proper remedy under their procedure and statutes. In Georgia injunction is the remedy.

3. INJUNCTIVE RELIEF AND DOCTRINE OF FORUM NON CONVENIENS ARE MERELY TWO METHODS OF ATTAINING THE SAME RESULT.

Both injunctive relief and the doctrine of forum non conveniens have been applied many times to give relief to defendants who are sued in courts far distant from the scene of the accident and place of residence of the parties and witnesses, and which result in unnecessary expense and inconvenience. Both principles are applied to the same factual circumstances. The doctrine of forum non conveniens is applied in the court in which the plaintiff's case is pending. Injunctive relief is given by the courts of the plaintiff's residence. Both act in personam.

This Court has made no distinction between the principles underlying the doctrine of injunctive relief and forum non conveniens.

> "It is true that in cases under the Federal Employers' Liability Act we have held that the plaintiff's choice of a forum cannot be defeated on the basis of forum non conveniens. But this was because the special venue act under which those cases are brought was believed to require it. Baltimore & O. R. Co. v. Kepner, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, 136 A.L.R. 1222; Miles v. Illinois C. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104."
>
> Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 505, 91 L. Ed. 1055, 1061, 67 S. Ct. 839. (1947)

It will be noted that the Kepner and Miles cases which involved *injunctive* relief are cited in support of the propo-

sition that plaintiff's choice of a proper forum cannot be defeated on the basis of *forum non conveniens*.

This Court held in the Collett and Mayfield cases in allowing relief under the doctrine of *forum non conveniens* that the Miles and Kepner cases which involved *injunctive* relief were *no longer* binding as precedents because of the enactment of Section 1404 (a) and not because there was any distinction between the principles of forum non conveniens and injunctive relief. This is clearly shown in the concurring opinion of Mr. Justice Jackson in the Mayfield case which we cited above (p. 6) and in which he states that when Congress enacted the *forum non conveniens* statute it removed the compulsion under which the Supreme Court suffered in refusing to allow an *injunction* in the Miles case. In other words the venue provision of the Federal Employers' Liability Act no longer prohibits invoking the doctrine of forum non conveniens and should no longer affect the use of injunctions in proper cases.

Congress has acted and defendants are protected in Federal Courts against burdensome and oppressive suits of the type now before this Court. As appellants point out (Brief p. 15) the Alabama Courts reject all pleas of forum non conveniens. They do so because of an unusual statutory provision. In discussing this the Supreme Court of Alabama said: "Why the Legislature desired to burden the courts of this state with settling controversies between outsiders and which arose in other states is difficult to appreciate." Ex parte state ex rel. Southern Ry. Co., —— Ala. ——, 47 So. (2d) 249, 251. Since the Courts of Alabama cannot apply the doctrine of forum non conveniens, Respondent had no alternative but to seek the aid of Georgia Courts in preventing a Georgia resident and citizen from doing injustice and acting inequitably. If Georgia Courts cannot use injunctive relief in proper cases, the will of Congress when it enacted Section 1404 (a) is thwarted.

The Appellants' argument (Brief p. 19) that each state is free to apply its policy of forum non conveniens in Federal Employers' Liability Act cases under the doctrine of Douglas v. N. Y. N. H. R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, (1929) applies with equal force to our contention that Georgia Courts are free to apply its policy as to injunctive relief in proper cases.

Appellants argue that the Georgia Courts are seeking to apply its policy of forum non conveniens in the courts of Alabama. (Brief p. 20.) Respondent is not attempting in any way to enforce a policy upon the courts of Alabama. It is merely seeking equitable relief against a citizen of Georgia over whom the Superior Court of Ben Hill County has personal jurisdiction. The methods of procedure differ. The ultimate result is the same.

The Congress has full authority to enact laws regulating the procedure of the Federal Courts. It has no power to regulate the procedure of the courts of the several States. When Congress enacted Section 1404 (a) of the Judicial Code, it made forum non conveniens an established mode of procedure in the Federal Courts. The intent of Congress, as recognized by this Court, made this doctrine applicable to Federal Employers' Liability Act cases. Under it a Federal District Court of California, Alabama or any other State can transfer a case for proper cause to any other District Court in which it might have originally been brought.

The Congress exercised the full limit of its authority in making forum non conveniens applicable in the Federal Courts. It had no authority to regulate procedure of State Courts. If forum non conveniens is invoked in a State court in an applicable case, such court can merely dismiss the cause of action and has no authority or power to transfer the case to the courts of another State. The Circuit Court of Jefferson County, Alabama, is barred from grant-

ing a motion to dismiss on the ground of forum non conveniens. Respondent's suit in the Superior Court of Ben Hill County, Georgia, seeking injunctive relief against Pope, will attain the same result as a motion based upon forum non conveniens had Pope seen fit to file his original suit in the Federal Court of Alabama.

Injunction is the only relief available to respondent. It would be farcical to say that Respondent would be entitled to relief if Pope had filed his action in the Federal Court but cannot secure such relief because the suit was filed in the State Court of Alabama.

4. THE CASE OF BOYD VS. GRAND TRUNK WESTERN RAILROAD IS CLEARLY DISTINGUISHABLE FROM AND IN NO WAY APPLICABLE TO THE CASE NOW UNDER CONSIDERATION.

Counsel for Appellants lay great stress upon the case of Boyd v. Grand Trunk Western Railroad Company, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, (1949) and urge it as authority to substantiate their position. We submit that this case involved an entirely different state of facts and determined an entirely different question which is not involved in the case now sought to be reviewed.

The only question before this Court in the Boyd case was the validity of a contract signed by an injured employee after the accident and in which he agreed to file suit only in either the state or district court where the accident occurred or where he resided at the time he sustained his injuries. This Court so stated in the first sentence of its opinion in that case:

In the Boyd case, supra, the Circuit Court of Michigan held that the contract restricting the choice of venue was void. The Supreme Court of Michigan reversed the case holding that the contract was good since it was executed after the injury was sustained. This Court reversed the

case on the sole ground that the contract restricting choice of venue was directly in conflict with Section 5 of the Federal Employers' Liability Act (45 U.S.C.A., Sec. 55) and for that reason was void. No question of injunction or of equitable relief was involved in the Boyd case and no such questions were considered or passed upon by this Court in that decision.

For these reasons, we submit that the Boyd case, supra, is not applicable to and in no way controls the issues here involved.

E. CONCLUSION.

The decision of the Supreme Court of Georgia which is sought to be reviewed correctly interprets and construes the effect of Section 1404 (a) of the Judicial Code upon Section 6 of the Federal Employers' Liability Act as laid down in the prevailing decisions of this Court.

While an injured employee is not restricted in his choice of venue, the doctrine of forum non conveniens can be invoked in Federal Courts where his choice works an undue hardship and inconvenience and is not in the interest of justice. This is the prevailing view of this Court. It was so decided in the Collett case, supra.

In the Mayfield case, supra, this Court held that there was no longer any compulsion resting upon the State courts under the venue provision of the Federal Employers' Liability Act and ruled that the State Courts were free to apply their own doctrines. This is exactly what the Supreme Court of Georgia has done in the case now sought to be reviewed.

The doctrines promulgated by this Court in the Miles and Kepner cases, supra, were enunciated prior to the enactment of Section 1404 (a) of the Judicial Code and were based solely upon the supposed force of Section 6 of the

Federal Employers' Liability Act. These decisions have been abrogated and are no longer of force since the enactment of Section 1404 (a) of the Judicial Code. The principles adopted by this Court in the Collett and Mayfield cases, supra, are now of force.

The decision of the Supreme Court of Georgia recognizes the doctrines of these prevailing cases and is in full accord with the rulings of this Court upon the federal question involved. It conforms to those rulings and there is no conflict between the decisions of this Court and that of the supreme Court of Georgia upon those questions.

For these reasons, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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